

**BRASWELL LAW, LLC
111 GEORGIA AVENUE N.E.
GLEN BURNIE, MD 21060**

January 15, 2008

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 5963

Dear Sir or Madam:

Enclosed please find my notarized Complaint alleging violations of federal law by the Andy Harris for Congress Committee and the Club for Growth Political Action Committee.

Sincerely,



James Braswell

Enclosure (Original & 3 Copies)

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2008 JAN 17 P 2:26

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BEFORE THE FEDERAL ELECTION COMMISSION

COMPLAINT

Respondents:

Andy Harris for Congress Committee
Club for Growth Political Action Committee

MUR # 5963

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2008 JAN 17 P 2:28

Introduction

This Complaint alleges that the Andy Harris for Congress Committee, the federal campaign of Andy Harris for the 1st Congressional District of Maryland, and the Club for Growth Political Action Committee, a national political organization in Washington, DC, violated the Federal Election Campaign Act by illegally coordinating expenditures of approximately \$250,000 to attack Andy Harris's political opponents.

On January 11, 2008, the Club for Growth Political Action Committee spent approximately \$250,000 to fund negative attack ads on television in apparent coordination with Andy Harris' campaign. At precisely the same time that Andy Harris littered Maryland mail boxes with a negative attack mailer about his primary opponents, the Club for Growth PAC released a negative attack ad on Maryland television and radio stations containing a virtually identical negative message. The choreographed timing and negative content of these public communications strongly indicate illegal coordination between Andy Harris's congressional campaign and the Club for Growth PAC.

The Facts

On or about January 11 or 12, 2008, Andy Harris's campaign distributed direct mail literature attacking his opponent, State Senator E.J. Pipkin, because he voted for Maryland's annual budget. On personal knowledge, the mailer was received in voters' mail boxes on Monday, January 14. The heading of the mailer stated: "E.J. Pipkin supported Governor O'Malley's budget." Among other statements in the text appeared the statement: "In fact, just this year, Pipkin voted for Governor O'Malley's budget." A copy of the Andy Harris mailer is attached to this Complaint.

On January 11, 2008, the Club for Growth PAC issued a press release announcing its release of "a new television and radio ad in a \$250,000 ad buy across Maryland's First Congressional District." The advertisement includes the statement: "It's a fact, in Annapolis Pipkin joined the liberals and voted for Martin O'Malley's massive big spending budget." A copy of the Club for Growth PAC's January 11 press release is attached to this Complaint and the advertisement (containing the statement quoted above) is available at www.clubforgrowth.com/2008/01/club_pac_releases_ads_in_md01.php.

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The Andy Harris campaign finance disclosures viewed online at <http://www.fec.gov> list several tens of thousands of donations with the phrase "Earmarked through Club for Growth" showing that the two organizations have been linked for several months.

Legal Violations

FEC rules treat an expenditure to fund a "coordinated communication" as contribution to the candidate with whom it was coordinated. An expenditure is "coordinated" with a candidate if it is "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 CFR § 109.20(a). An expenditure for a television or radio ad referencing a federal candidate is "coordinated" with a candidate under either of the following circumstances:

- (1) The ad is created, produced or distributed at the request or suggestion of a candidate or his campaign; or
- (2) The candidate or his campaign is materially involved in decisions regarding any of the following: (i) ad content, (ii) timing for airing the ad, (iii) intended audience for the ad, (iii) means of distributing the ad, or (iv) media outlets for airing the ad; or
- (3) The ad is created, produced or distributed after one or more substantial discussions with the campaign about the campaign's plans, activities or needs.

See 11 CFR § 109.21(d)(1), (2), (3) (among other conduct).

A third-party's coordinated expenditure constitutes an "in-kind contribution" to the candidate. An in-kind contribution by a political action committee cannot exceed its contribution limit of \$5,000 for a primary election. The candidate must publicly report the in-kind contribution and expenditure.

Illegal coordination between Andy Harris's campaign and the Club for Growth PAC implicates several violations of federal law:

1. The Club for Growth PAC's negative attack ad released on January 11 and aired during the week of January 14 constitutes an illegal coordinated communication.
2. The negative attack ad meets the "content" standard of 11 CFR § 109.21(c) because it constitutes an "electioneering communication" under § 109.21(c)(1), expressly advocates the defeat of clearly identified candidates through the exhortation communicated in the tag line "Maryland Republicans deserve better" under § 109.21(c)(3), and is a "public communication" under § 109.21(c)(4)(i).

3. The negative attack ad released on January 11 meets the "conduct" standard of 11 CFR § 109.21(d) because the ad's timing and content was clearly choreographed between Andy Harris's campaign committee and the Club for Growth PAC.

4. Coordination between Andy Harris's campaign and the Club for Growth PAC to choreograph the timing and negative content of a \$250,000 ad buy constitutes an illegal, excessive contribution by the Club for Growth PAC to Andy Harris. By law, the Club for Growth PAC is limited to contributing \$5,000 to Andy Harris's campaign in this primary election.

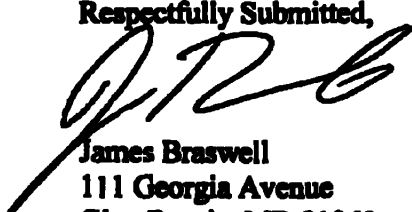
5. A coordinated expenditure by the Club for Growth PAC is required to be reported by Andy Harris's campaign. The Harris campaign has not reported the Club for Growth PAC's \$250,000 in-kind contribution and expenditure.

6. The Club for Growth PAC's negative attack ad contains a disclaimer that states the ad is "not authorized by any candidate or candidate's committee." A coordinated expenditure necessarily is authorized by the candidate with whom it was coordinated.

Conclusion

I respectfully request that the Federal Election Commission investigate the choreographing of the timing and content of the Club for Growth PAC's \$250,000 expenditure for negative attack ads disseminated on or about January 11, 2008.

Respectfully Submitted,


James Braswell
111 Georgia Avenue
Glen Burnie, MD 21060

Signed and sworn by James Braswell before me this 15th day of January, 2008.


Notary Public

My Commission Expires: _____

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ATTACHMENT 1

Andy Harris for Congress Direct Mail Piece

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Pipkin Supported O'Malley's Budget Mailer

E.J. Pipkin supported Governor O'Malley's budget

"The budget, while
not perfect, was
a step in the right
direction."

- E.J. Pipkin



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E.J. Pipkin supported Governor O'Malley's budget



"The question is not why did I vote
for the [O'Malley] budget, but
why did I vote once again [for]?"

- E.J. Pipkin
November 12, 2007

No wonder *The Gazette* Newspaper called him a
"HERO TO DEMOCRATS."

When Republicans said no to Governor
O'Malley E.J. Pipkin said yes.
Pipkin has stood proudly for the issues that
Democrats believe in.

In fact just this year Pipkin voted for Governor
O'Malley's budget -- even though the budget
had a billion dollar shortfall. (Source: 1/12/08 - The
Gazette - 2008)

Without the support of people like Pipkin,
O'Malley could never have passed his spending
proposals.

No wonder Pipkin was called a "Hero to Democ-
rats" by the *The Gazette* Newspaper. He is a
reliable vote Governor O'Malley can count on.

When Republicans
said no to Gover-
nor O'Malley,
Pipkin said yes.
He's a reliable vote
the governor can
count on.

Close Window

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ATTACHMENT 2

Club for Growth PAC Press Release Jan. 11, 2008

Ad can be viewed at:

www.clubforgrowth.com/2008/01/club_pac_releases_ads_in_md01.php

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January 11, 2008

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Club PAC Releases Ads in MD-01

2008 JAN 17 P 2: 26

Club PAC Releases New Ad in Md-01
Gilchrest and Pipkin = Pelosi and O'Malley

Washington – Today, the Club for Growth PAC released a new television and radio ad in a \$250,000 ad buy across Maryland's First Congressional District.

Entitled "Four of a Kind," the television ad (see below) points out that Wayne Gilchrest voted with Nancy Pelosi and liberal Democrats more often than any other Republican House member (CO Politics) and that E.J. Pipkin joined the Democrats in voting for Governor Martin O'Malley's massive, big-spending FY 2008 budget (HB 50, 04/02/07). "Maryland Republicans deserve better than Nancy Pelosi and Martin O'Malley look-alikes," said Club for Growth President Pat Toomey. "They deserve a principled conservative like State Senator Andy Harris."

Entitled "Masquerade," the radio ad (MP3 file) demonstrates that Gilchrest and Pipkin are pretending to be conservatives, but beneath their masks, they are two economic liberals who side with Pelosi and Governor O'Malley. Pipkin even voted for an eminent domain bill (HB 907, 04/04/05), giving the government the power to take private property from one person and give it to another and donated money to Democrat Kathleen Kennedy Townsend's campaign. That doesn't sound very conservative.

"No matter what Wayne Gilchrest and E.J. Pipkin say on the campaign trail, their records demonstrate that they are not conservative, and they will not fight for taxpayers in Congress," Mr. Toomey added. "In Congress, Gilchrest has a long record of voting for pork, voting for tax hikes, and voting against political free speech. In the Maryland State Legislature, Pipkin has demonstrated a similar tendency, voting for massive increases in government spending and eminent domain abuse."

"In stark contrast, Andy Harris has a long track record of voting against bloated state budgets and fighting tax increases. If elected to Congress, Andy Harris will be a congressman Maryland Republicans can be proud of."

20044231432

The \$250,000 ad buy will run on broadcast and cable television stations and radio stations in the Baltimore and Salisbury markets for two weeks. The scripts are below and documentation is attached.

PAID FOR BY CLUB FOR GROWTH PAC AND NOT AUTHORIZED
BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE. 202-955-
5500.

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ATTACHMENT 3

Example of Earmarked Club for Growth Funds

Andy Harris for Congress Finance Report

Filed 10/14/2007

Amended 11/3/2007

**Full Report Can be Viewed at:
www.fec.gov**

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SCHEDULE A (FEC Form 3)
ITEMIZED RECEIPTS

Use separate schedule(s)
or each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 26 / 455

☒ 11a ☐ 11b ☐ 11c ☐ 11d ☐ 12 ☐ 13a ☐ 13b ☐ 14 ☐ 15

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NAME OF COMMITTEE (In Full)

Andy Harris for Congress

Full Name (Last, First, Middle Initial)

A. Robert H. Gossman

Mailing Address 2409 Sundial Ct.

City State Zip Code
Fort Myers FL 33908

FEC ID number of contributing
federal political committee.

C

Name of Employer
None

Occupation
Retired

Receipt For: 2008
X Primary General
Other (specify) ☐

Election Cycle-to-Date ☒
1000.00

Date of Receipt

08 / 29 / 2007

Transaction ID: SA11A1.8900

Amount of Each Receipt This Period

Earmarked through Club for
Growth
Limit Increased Due to Opponent's
Spending (2 U.S.C. 441a(4)(1))

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OFFICE OF GENERAL
COUNSEL
JAN 2 2 27

Full Name (Last, First, Middle Initial)

B. David Cullen

Mailing Address 880 Stuart Road

City State Zip Code
Edison NJ 08840

FEC ID number of contributing
federal political committee.

C

Name of Employer
N/A

Occupation
Consultant

Receipt For: 2008
X Primary General
Other (specify) ☐

Election Cycle-to-Date ☒
2800.00

Date of Receipt

08 / 25 / 2007

Transaction ID: SA11A1.8788

Amount of Each Receipt This Period

2800.00

Earmarked through Club for
Growth
Limit Increased Due to Opponent's
Spending (2 U.S.C. 441a(4)(1))

Full Name (Last, First, Middle Initial)

C. Paul Cullen

Mailing Address 880 Stuart Road

City State Zip Code
Princeton NJ 08540

FEC ID number of contributing
federal political committee.

C

Name of Employer
Self Employed

Occupation
Writer-artist

Receipt For: 2008
X Primary General
Other (specify) ☐

Election Cycle-to-Date ☒
2800.00

Date of Receipt

08 / 25 / 2007

Transaction ID: SA11A1.8788

Amount of Each Receipt This Period

2800.00

Earmarked through Club for
Growth
Limit Increased Due to Opponent's
Spending (2 U.S.C. 441a(4)(1))

SUBTOTAL of Receipts This Page (optional) -----

5100.00

TOTAL This Period (last page this line number only) -----

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FOR LINE NUMBER: PAGE 273/485

(check only one)

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12 13a 13b 14 15

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NAME OF COMMITTEE (in Full)

Andy Harris for Congress

A. Full Name (Last, First, Middle Initial) Club For Growth PAC Mailing Address 2001 L St. NW Ste 800 City Washington State DC Zip Code 20038 FEC ID number of contributing federal political committee. C C00432280 Name of Employer Occupation Receipt For: 2008 X Primary General Other (specify) Election Cycle-to-Date .00		Date of Receipt 08 / 28 / 2007 Transaction ID: SA11C.8324 Amount of Each Receipt This Period 500.00 Empaneled from Robert R. Grady Limit Increased Due to Opponent's Spending (2 U.S.C. 441a(f)(4)(1)-(7)) (MEMO ITEM)
B. Full Name (Last, First, Middle Initial) Club For Growth PAC Mailing Address 2001 L St. NW Ste 800 City Washington State DC Zip Code 20038 FEC ID number of contributing federal political committee. C C00432280 Name of Employer Occupation Receipt For: 2008 X Primary General Other (specify) Election Cycle-to-Date .00		Date of Receipt 08 / 28 / 2007 Transaction ID: SA11C.8328 Amount of Each Receipt This Period 2000.00 Empaneled from Jerry L. Hayden Limit Increased Due to Opponent's Spending (2 U.S.C. 441a(f)(4)(1)-(7)) (MEMO ITEM)
C. Full Name (Last, First, Middle Initial) Club For Growth PAC Mailing Address 2001 L St. NW Ste 800 City Washington State DC Zip Code 20038 FEC ID number of contributing federal political committee. C C00432280 Name of Employer Occupation Receipt For: 2008 X Primary General Other (specify) Election Cycle-to-Date .00		Date of Receipt 08 / 28 / 2007 Transaction ID: SA11C.8332 Amount of Each Receipt This Period 400.00 Empaneled from Roland Hest Limit Increased Due to Opponent's Spending (2 U.S.C. 441a(f)(4)(1)-(7)) (MEMO ITEM)

SUBTOTAL of Receipts This Page (optional) 0.00

TOTAL This Period (last page this line number only) 0.00

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